

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSEPH FIUMANO, for	:	
himself and all others similarly	:	
situated,	:	
Plaintiff,	:	CIVIL ACTION
	:	No. 17-465
v.	:	
METRO DINER MANAGEMENT,	:	
LLC, et al.,	:	
Defendants.	:	

ORDER

AND NOW, this 7th day of February, 2023, it is **ORDERED** that:

- Plaintiffs' motion for summary judgment on the FLSA tip pool claim is **DENIED**.
- As to the tip pool claim relating to Hosts, Defendants' motion for partial summary judgment is **GRANTED**.
- As to the tip pool claim relating to Bussers, Defendants' motion for partial summary judgment is **DENIED**.
- Plaintiffs' motion for summary judgment on the FLSA 80/20 claim is **DENIED**.
- Defendants' motion for partial summary judgment to dismiss claims against CHG, John Davoli, Sr., and Mark Davoli is **GRANTED**. Defendants' motion for partial summary judgment to dismiss claims brought by employees employed at any Metro Diner restaurants not including the original three restaurants against MD Original is **GRANTED**.
- Defendants' motion for partial summary judgment to dismiss any opt-in Plaintiffs who worked in Nevada is **GRANTED**. Parties must investigate which opt-in Plaintiffs worked at a Nevada Metro Diner location and were therefore paid in

accordance with Nevada state law. Parties must submit evidence related to the employment of those opt-in Plaintiffs at the Final Pretrial Conference.

s/ ANITA B. BRODY, J.

ANITA B. BRODY, J.

Copies **VIA ECF**